

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 148 OF 2021

STATE

V

M. I [A Juvenile]

Counsel : Mr. J. Nasa for the State.
: Mr. M. Yunus for the Juvenile.
Ms. Y. Latcmi for and on behalf of the Social
Welfare Department.

Date of Hearing : 06 May, 2022

Date of Punishment : 19 May, 2022

PUNISHMENT

(The names of the victim and the juvenile are suppressed they will be referred to as S.S and M.I respectively)

1. The juvenile is charged by virtue of the following information filed by the Director of Public Prosecutions dated 2nd March, 2022:

Statement of Offence

RAPE: contrary to section 207(1), (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

M.I on the 16th day of December, 2021 at Clopcott, Ba in the Western Division, had carnal knowledge of S.S, a child under the age of 13 years.

2. On 7nd March, 2022 the juvenile pleaded guilty to the above count in the presence of his counsel, thereafter on 28th March, 2022 the juvenile understood and admitted the summary of facts read.
3. The summary of facts read by the state counsel is as follows:
 1. *The complainant in this matter is S.S (PW1), 6 years old, student of Clopcott, Ba. A copy of PW1's birth certificate is attached herein.*
 2. *The juvenile in this matter is M.I, 17 years old, tyre repair boy, residing at Clopcott, Ba.*
 3. *On the 16th of December 2021, PW1 was playing with this bicycle at one Keraf's place whilst playing with his bicycle, the juvenile came and called out to him. PW1 recalls that Keraf's mother had told the juvenile to go but the juvenile did not leave.*
 4. *After a while the juvenile came again, called PW1 and took him to one guava tree near Shalen's house. When they came to the guava tree, the juvenile took off PW1's clothes and he also took off his clothes. The juvenile then made PW1 sleep (lay) on the ground and he inserted his penis into PW1's anus.*
 5. *The juvenile inserted his penis three times into PW1's anus and PW1 felt pain. PW1 told the juvenile that he was in pain but the juvenile kept forcefully inserting his penis into PW1's anus. After that the juvenile wore his clothes and left because one i-Taukei boy came and scolded the juvenile.*

6. *KITIONE VINAKA (PW2) stated that on the above date and time whilst returning home from work he decided to take a short cut. Whilst walking he heard someone screaming. PW2 thought it was a calf but when he moved close to a guava tree, he saw the juvenile on top of PW1. He saw the juvenile inserting his penis inside PW1's anus. After that he saw the juvenile pull up his shorts and PW1 also pulled up his own shorts and when the juvenile came out he asked the juvenile what he did to the small boy. The juvenile said "no" but when PW2 told him that he saw everything, the juvenile ran away. Later PW1 came out of the bush and PW2 asked what happened to him. PW1 told him what the juvenile did to him. PW2 stated that he took pictures and later showed it to his father in law and his father in law reported the matter to Police.*
 7. *The Police investigated the matter and the juvenile was arrested and interviewed under caution. The juvenile admitted committing the offence. The juvenile admitted that he forcefully inserted his penis inside PW1's anus (Q&A 83 – 93). He also admitted that he told PW1 not to tell anyone as it is between them (Q&A 96). He also stated that one i-Taukei man saw them and scolded him and he ran away (Q&A 97 – 101).*
 8. *The juvenile was charged for rape and he stated in his charge statement that he admitted to inserting his penis inside PW1's anus and he wishes to apologise to the honourable court (Q&A 15).*
 9. *PW1 was medically examined and the medical report is attached herein.*
4. After considering the summary of facts read by the state counsel which was admitted by the juvenile and upon reading his caution interview and

charge statement this court is satisfied that the juvenile has entered an unequivocal plea of guilty on his freewill.

5. This court is also satisfied that the juvenile has fully understood the nature of the charge and the consequences of pleading guilty. The summary of facts admitted satisfies all the elements of the offence of rape as charged. In view of the above, this court finds the juvenile guilty as charged.
6. The learned counsel for the juvenile presented the following mitigation:
 - a) The juvenile was 17 years at the time of the offending;
 - b) Resides with his parents and paternal grandparents;
 - c) Was working as a tyre repair boy;
 - d) Pleaded guilty at the first available opportunity;
 - e) Cooperated with the police;
 - f) First and young offender;
 - g) Is genuinely remorseful;
 - h) Seeks forgiveness of the court;
 - i) Promises not to re-offend.

REASONS FOR THE COMMISSION OF THE OFFENCE

7. According to the juvenile's counsel the juvenile was aroused after the victim started to touch his penis which resulted in wrong judgment by the juvenile.

TARIFF

8. The maximum penalty for the offence of rape is life imprisonment. According to the case of *Aitcheson vs The State [2018] FJSC 29, CAV 0012 of 2018 (2 November, 2018)* the tariff for the rape of a juvenile is an imprisonment term between 11 years and 20 years.
9. The juvenile falls under a special categorization when it comes to punishment under section 30 (3) of the Juveniles Act as a young person which prescribes the maximum punishment for young persons at 2 years imprisonment.

AGGRAVATING FACTORS

10. The following aggravating factors are obvious in this case:
 - a) Breach of Trust

The juvenile and victim are from the same settlement and are friends. The victim went with the juvenile because he trusted the juvenile. The juvenile breached the trust of the victim by his action. This type of offending has now become very prevalent.

b) Planning

There is a degree of planning by the juvenile whereby he asked the victim to accompany him to the nearby bush.

c) Victim was vulnerable and helpless

The victim was alone, vulnerable, and helpless the juvenile took advantage of the situation and the circumstances that prevailed at the time.

d) Age difference

The victim was 6 years of age and the juvenile was 17 years, the age difference is substantial. The juvenile was the matured of the two.

e) Victim Impact Statement

In the victim impact statement the victim mentions that as a result of the incident he is fearful of the juvenile.

SOCIAL WELFARE REPORT

11. As per the order of this court the Social Welfare Department conducted a house assessment and interviews before compiling a pre-punishment report for the juvenile.
12. The Social Welfare Department recommends the following for the juvenile:

- a) *Probation orders be made since the Social Welfare Department has qualified probation officers to supervise the juvenile. The officer does not recommend detention at the Fiji Juvenile Rehabilitation and Development Centre.*
- b) *The juvenile be given a chance for rehabilitation. He has family support that will help him live as a law abiding citizen;*
- c) *The juvenile to receive counseling with a Counseling Agency;*
- d) *The juvenile to be in good behaviour and not to reoffend.*

13. The Welfare Officer had also interviewed the current caregiver Shareen Nisha at page 3 the officer has recorded the following:

“...According to Shareen, the juvenile is doing well and helps in their farm and he has been on his best behaviour post the incident and has shown signs of improvement – i.e. he is not smoking and listens to the elders.”

PARENTAL SUPPORT

14. The parents and paternal grandmother of the juvenile were in court they have pledged their full support for their son/ grandson. The parents have seen a positive change in their son after he has started to live in Rakiraki with his paternal grandmother. The changes they have seen is good and they are confident their son will be able to make a better citizen. The juvenile was in court and he expressed regret and remorse. He takes responsibility for his actions and promises not to reoffend.

15. As a sign of their commitment both parents of the juvenile are happy to enter into a bond of \$500.00 and are willing to participate in any programs the Social Welfare Department may wish them to be part of with their son.
16. Considering the objective seriousness of the offence committed, I select 1 year imprisonment as the starting point of the punishment. The punishment is increased for the aggravating factors.
17. For the early guilty plea which I consider to be genuine and mitigation the punishment is further reduced. From the court file the juvenile has been in detention for about one month. The final punishment is now 2 years imprisonment. In my view the detention of one month at the Fiji Juvenile Rehabilitation and Development Centre was an eye opener for the juvenile.
18. Under section 26 (2) (a) of the Sentencing and Penalties Act this court has a discretion to suspend the final punishment since it does not exceed 3 years imprisonment.
19. In *State vs. Alipate Sorovanalagi and others*, Revisional Case No. HAR 006 of 2012 (31 May 2012), Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraph 23:

“[23] In DPP v Jolame Pita (1974) 20 FLR 5, Grant Actg. CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg. CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg. CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

20. The following relevant special circumstances or special reasons for the suspension of the imprisonment term in my view needs to be weighed in choosing an immediate imprisonment term or a suspended punishment.
21. The juvenile is a young person as per the Juveniles Act, he is of good character, isolated offence was committed by him, he was 17 years of age at the time of the offending, pleaded guilty at the earliest opportunity, is genuinely remorseful, cooperated with police and he takes full responsibility for his actions. These special reasons render immediate imprisonment term inappropriate.
22. The juvenile with parental and family guidance, supervision and support has a bright future ahead of him hence an imprisonment term will not augur well for his future, the juvenile has been in detention at the Fiji Juvenile Rehabilitation and Development Centre, an experience that will

remind him to keep away from trouble. This court has taken into account rehabilitation over and above retribution.

23. Having considered section 4 (1) of the Sentencing and Penalties Act this court is of the view that the punishment is just in all the circumstances of the case.
24. The only reason why this punishment is below the tariff is because the Juveniles Act imposes a limit on the punishment for young persons under section 30 (3) of the Juveniles Act.
25. In summary the juvenile is imposed a punishment of 2 years imprisonment which is suspended for 3 years with immediate effect. The effect of the suspended sentence is explained to the juvenile.

ORDERS

26. The following orders are to take immediate effect:
 - a) The juvenile is imposed a punishment of 2 years imprisonment which is suspended for 3 years with immediate effect;
 - b) The juvenile is to be placed under probation by the Social Welfare Department for the next two years. The terms of the probation are to be worked out by the Social Welfare Department in consultation with the Probation Officers, the parents and the maternal uncle Iqbal Hussein;
 - c) The juvenile is not to enter and stay at Clopcott, Ba for the next two years unless there is a death in the immediate family at Clopcott, Ba. In such a situation the juvenile is to only stay at

Clopcott, Ba for a maximum period of 10 days consecutively on any one occasion being a maximum of three occasions in every 6 months to attend to the rituals only;

- d) A permanent Domestic Violence Restraining Order is issued to protect the victim under the Domestic Violence Act being non-contact and non-molestation orders;
- e) Both parents of the juvenile are to sign a good behaviour bond jointly on behalf of the juvenile in the sum of \$500.00. The parents are also to pay a fine of \$150.00 within 14 days from today payable at the Magistrate's Court at Ba if they are not able to come to the High Court at Lautoka;
- f) The juvenile is to reside with his maternal grandparents under the supervision of his maternal uncle Iqbal Hussein at Cuvu, Sigatoka for the next two years;
- g) The Social Welfare Department is to immediately arrange for the enrolment of the juvenile in one of the Vocational Training Schools in Sigatoka;
- h) The Social Welfare Department is to immediately arrange for the counseling of the juvenile in the presence of his maternal uncle Iqbal Hussein with the view to assist him in keeping out of conflict with the law;
- i) The Social Welfare Department is also at liberty to work out any programs or plans which will be in the interest of the juvenile;

- j) It is the responsibility of the maternal grandparents and the maternal uncle of the juvenile to ensure that the juvenile obeys any directions given by the Social Welfare Department;
- k) A copy of this punishment is to be served on the Officer in Charge of the Social Welfare Department, Ba and Sigatoka;
- l) Parties to apply generally in case there is a need to modify or amend any of the above mentioned orders except order (a);
- m) 30 days to appeal to the Court of Appeal.

Sunil Sharma
Judge

At Lautoka

19 May, 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Messrs M.Y Law, Ba for the Juvenile.